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SUPREME COURT, U.S.

82-5744

APPENDIX

Appendix A:
Meeks v. State,(Fla.S.Ct.No.59,958,June 17, 1982)

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Criminal Law—Post-Conviction Relief—Ineffective Assistance of Counsel—Denial of Relief Proper Where Defendant Fails to Show Specific Serious Deficiency Substantial Enough to Prejudice Defendant and Affect Outcome of Trial

Reh. Denied 9-13-82

DOUGLAS RAY MEEKS v. STATE. Supreme Court of Florida. Case No. 59,958. June 17, 1982. An appeal from the Circuit Court in and for Taylor County, Spence, Judge. Stephen D. Stitt and June Rice, Gainesville, Florida, for appellant. Jim Smith, Attorney General, and Wallace E. Allbritton, Assistant Attorney General, Tallahassee, Florida, for appellee.

(PER CURIAM.) This is an appeal from a denial, after evidentiary hearing, of appellant's post-conviction relief motion under Florida Rule of Criminal Procedure 3.850, asserting ineffective assistance of trial counsel. Appellant was convicted of a convenience store armed robbery, at which he and an accomplice forced a store clerk and customer to lie on the floor. Appellant then fired five execution-type shots, killing the customer but, fortunately, only wounding the clerk, who later testified that appellant was the one with the gun.

This is the fourth occasion that this case has appeared before this Court. The initial trial, in March, 1975, was one of the first death cases tried under the newly approved death sentence procedures. We have detailed the facts of this case in our three prior reviews. In Meeks v. State, 339 So.2d 186 (Fla. 1976), cert. denied, 439 U.S. 991 (1978), we reviewed appellant's trial on the merits and affirmed his conviction and sentence of death. In Meeks v. State, 364 So.2d 461 (Fla. 1978), this Court reaffirmed the imposition of the death sentence, after a remand for resentencing in order to comply with the dictates of Gardner v. Florida, 430 U.S. 339 (1977). The Gardner violation was discovered after the original opinion issued. In Meeks v. State, 382 So.2d 673 (Fla. 1980), we found the allegations contained in that part of appellant's 3.850 motion relating to ineffective assistance of counsel required an evidentiary hearing, and we remanded for that purpose. It is the review of that proceeding which is now before us.*

Appellant contends that his trial counsel was ineffective, claiming (1) that counsel conducted inadequate jury voir dire and failed to seek and obtain additional peremptory challenges; (2) that counsel improperly allowed the prosecutor to present evidence relating to appellant's codefendant and failed to properly pursue a strategy of establishing the codefendant's greater culpability; and (3) that appellant's original trial counsel was unprepared for the sentencing phase of the proceeding.

The trial court, in denying the relief requested, made the following findings:

> From the vantage point of hindsight of five years, defendant, through his present counsel, assaults the conduct of his defense by his former counsel. Although told that his former counsel was present for testimony, defendant did not choose to call him to explain his conduct of the trial and appeal. The State did not call former counsel. Nor did the Court. Thus, counsel whose conduct of the trial and appeal is in question did not testify.
>
> Both defendant and the State did call attorneys to testify as expert witnesses. Opinions were expressed by them as to trial counsel's effectiveness. Defendant also made proffers as to racial attitudes in Taylor County as they existed at trial time and at the present as well as concerning defendant's background. Upon consideration, the court finds that the greater weight of the evidence does not support defendant's contention that he did not receive reasonably effective assistance of counsel.
>
> Tactics and strategy of counsel at trial, just as tactics and strategy of counsel at the instant evidentiary hearing, are areas that the trial judge could frequently be tempted to question. The court attempts to refrain from doing so lest it usurp counsel's role.
>
> Upon consideration of the evidence, the court finds that defendant received reasonably effective assistance of counsel at trial and upon appeal based upon the totality of the circumstances of these cases.

We affirm the ruling of the trial judge.

With reference to the asserted criticisms of trial counsel's conduct at jury selection, it must be recognized that the methods of jury voir dire are subjective and individualistic. Many experienced trial lawyers have a strong belief in short voir dire examinations. Conversely, others conduct as extensive an examination as the trial judge will allow. The views of what constitutes the best tactical approach are divergent, and the manner of the examination varies from community to community. What might be appropriate in Palm Beach or Fort Lauderdale may be unacceptable in Pensacola or Marianna. We find this record does not establish any identifiable deficiencies in appellant's trial counsel's voir dire examination, nor do we find his asserted failure to ask for additional peremptory challenges an erroneous omission by counsel necessitating a conclusion of ineffectiveness.

We also reject the second contention that appellant's trial counsel was deficient by allowing evidence of the codefendant's participation in the crime. It clearly appears that defense counsel attempted to make the codefendant the more dominant participant. In fact, appellant's next assertion of deficiency is that defense counsel did not do enough to establish the dominance of his codefendant, both in the trial on the merits and in the penalty phase. This argument, to be valid, must as a predicate establish the codefendant as the undisputed dominant individual. That fact has not been established in the instant case. We recognize that the dominant individual in a multi-party murder constitutes an important element, particularly where one participant receives the death sentence and the other, as in the instant case, receives only a life sentence. However, we have examined the total record in this cause and conclude that it reflects the codefendant was not the dominant force. We conclude that appellant's trial counsel provided reasonably effective assistance of counsel under the instant circumstances.

We reject the third assertion that defense counsel did not properly represent appellant in the sentencing phase of these proceedings. Appellant argues that trial counsel six years ago should have known what the law would be at this time. This is clearly without merit. See Parker v. North Carolina, 397 U.S. 790 (1970); Knight v. State, 394 So.2d 997 (Fla. 1981).

We find that appellant has failed to show that the asserted deficiencies of his trial counsel meet the requirements set forth in Knight v. State. As we said in Knight, "the defendant has the burden to show that this specific, serious deficiency, when considered under the circumstances of the individual case, was substantial enough to demonstrate a prejudice to the defendant to the extent that there is a likelihood that the deficient conduct affected the outcome of the court proceedings." Id. at 1001. This, appellant has not done. The trial judge properly denied the motion for post-conviction relief, and we, accordingly, affirm. It is so ordered.

(Sundberg, C.J., Adkins, Boyd, Overton, Alderman & McDonald, JJ., Concur.)

*This decision should not be confused with Meeks v. State, 336 So.2d 1142 (Fla. 1976), which concerns a review of an entirely independent murder conviction and sentence of death.

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Appendix B

Supreme Court of Florida

No. 58,618

DOUGLAS RAY MEEKS, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[March 20, 1980]

PER CURIAM

This is an appeal from an order denying Douglas Meeks' motions for post-conviction relief under Florida Rule of Criminal Procedure 3.850. Appellant requested an evidentiary hearing on his motions and a stay of execution pending disposition thereof. Having reviewed the record and having heard oral argument, we concluded that appellant was entitled to a stay of execution pending disposition of this appeal. The stay of execution was entered on February 11, 1980, after oral argument on that date.

Appellant has been convicted of first-degree murder and sentenced to death on two separate occasions. On March 12, 1975, appellant was convicted and sentenced to death for the murder of Lloyd Walker (lower court No. 74-299 CF). This Court affirmed the conviction and sentence on October 28, 1976, reported at 339 So.2d 186 (Fla. 1976). On May 6, 1977, we issued a Gardner[1] order directing the trial judge to state whether his sentence was based on any information not known to appellant. On May 18, 1977, the judge responded that he had relied in part on a psychiatric report which had not been furnished to appellant. This

1. Gardner v. Florida, 430 U.S. 349 (1977).

Court remanded the cause to the trial court for an evidentiary hearing on the issue, at which time it was learned that appellant's trial counsel had been present during the examination upon which the report was based. Appellant was afforded an opportunity to rebut the contents of the psychiatric report, but his testimony at the hearing only confirmed the report's accuracy. On November 2, 1978, we reaffirmed the death sentence, 364 So.2d 461 (Fla. 1978). Appellant sought review of his original conviction and sentence as well as the Gardner proceeding by petition for writ of certiorari to the United States Supreme Court, which was denied, 439 U.S. 991 (1978).

On June 4, 1975, appellant was convicted and sentenced to death for the murder of Chevis Thompson (lower court No. 74-300 CF). We affirmed the conviction and sentence on July 21, 1976, 336 So.2d 1142 (Fla. 1976). In response to this Court's Gardner order of May 6, 1977, the trial judge stated that his sentence had been based exclusively on information known to appellant. On January 11, 1979, we issued an order declaring this case final.

Appellant filed motions for post-conviction relief pursuant to rule 3.850 of the Florida Rules of Criminal Procedure on December 11, 1979 (directed to case No. 74-299), and on December 31, 1979 (directed to case No. 74-300). On January 31, 1980, a hearing was held in the trial court to determine whether an evidentiary hearing should be granted.[2] The trial judge denied the motion for

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2. Rule 3.850 provides in pertinent part:

> If the motion and the files and records in the case conclusively show that the prisoner is entitled to no relief, the motion shall be denied without a hearing. In those instances when such denial is not predicated upon the legal insufficiency of the motion on its face, a copy of that portion of the files and records which conclusively shows that the prisoner is entitled to no relief shall be attached to the order. Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting attorney of the court, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not

evidentiary hearing. A second hearing was held on February 5, 1980, to determine whether a stay of execution should be granted and whether appellant was entitled to the relief requested in his rule 3.850 motions. Pro forma orders denying relief were filed on February 5, 1980. In an amended order dated February 8, 1980, the trial judge denied appellant's motion for post-conviction relief in case No. 74-299.

Appellant alleges the following six grounds for relief in his rule 3.850 motion with respect to his murder conviction in case No. 74-299 CF: (1) that court-appointed counsel did not render effective assistance of counsel at trial, at the sentence hearing, or on appeal; (2) that defendant's death sentence was imposed in violation of the sixth, eighth and fourteenth amendments to the United States Constitution because it was imposed upon the recommendation of a jury that was not required to be unanimous; (3) that the jury was selected through procedures that systematically excluded from jury service persons having scruples against the death penalty in violation of Witherspoon v. Illinois, 391 U.S. 510 (1968); (4) that defendant's death sentence violates the equal protection clause of the state and federal constitutions because it was imposed pursuant to a pattern and practice of racial discrimination in capital sentencing; (5) that there was no evidence of premeditation in the charge of murder and that, therefore, defendant could not be convicted of felony-murder and the underlying felony upon which the murder conviction was based; and (6) that defendant is entitled to a resentencing hearing on his first-degree murder conviction because

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2. (continued)

authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant him a new trial or correct the sentence as may appear appropriate.

statutory mandates were not followed and the prosecutor was allowed to make improper argument to the jury in contravention of due process of law. Except for ground 5, appellant alleges the same grounds for relief with respect to his murder conviction in case No. 74-300 CF and, in addition, alleges (6) that the defendant is entitled to a new trial because the prosecutor was allowed to make improper and inflammatory comments at closing argument; (7) that the sentencing judge's use of a court-ordered psychiatric examination violated defendant's rights under the fifth, sixth, eighth and fourteenth amendments to the Constitution because defendant abandoned his insanity defense before trial; and (8) that defendant's death sentence is unconstitutional as applied under the eighth and fourteenth amendments to the Constitution because it is part of a wanton and freakish pattern of imposition in the State of Florida. All except two of the foregoing issues were or could have been raised on direct appeal and therefore are foreclosed in this proceeding for collateral review. Adams v. State, No. 58,576 (Fla. Feb. 8, 1980). Henry v. State, 377 So.2d 692 (Fla. 1979); Sullivan v. State, 372 So.2d 938 (Fla. 1979). The two grounds cognizable for collateral attack here are the allegations of ineffective assistance of counsel and racial discrimination in capital sentencing (grounds 1 and 4 in both rule 3.850 motions).

In support of ground 1, appellant cites a number of specific instances in which counsel's failure to act allegedly amounted to ineffective assistance of counsel at the trial, sentencing and appeal stages of both proceedings. Predicated on these specific allegations, appellant contends that counsel's overall performance demonstrates that appellant was given only pro forma representation. We note first of all that a conviction is presumed to be valid. Therefore, when ineffective assistance of counsel is asserted, the burden is on the person seeking collateral relief to specifically allege and establish the grounds for relief and to establish whether these grounds resulted in prejudice to that person. Foxworth v. State, 267 So.2d 647 (Fla. 1972), cert. denied, 411 U.S. 987 (1973).

Second, the appropriate test to be applied in determining whether defendant was afforded effective assistance of counsel is not "sham and mockery," but whether counsel was reasonably likely to render and did render reasonably effective counsel based on the totality of the circumstances. United States v. Gray, 565 F.2d 881 (5th Cir.), cert. denied, 435 U.S. 955 (1978). This does not mean, however, that defendant must be afforded errorless counsel or that counsel will be judged ineffective by a standard based on hindsight. United States v. Fessell, 531 F.2d 1275 (5th Cir. 1976). Nor does this standard mean that counsel is to be judged ineffective by virtue of his failure to anticipate future developments in the law. Parker v. North Carolina, 397 U.S. 790 (1970); Davis v. Wainwright, 547 F.2d 261 (5th Cir. 1977).

Pursuant to a rule 3.850 motion, a prisoner is entitled to an evidentiary hearing unless the motion and the files and records in the case conclusively show that he is entitled to no relief. If the prisoner raises a matter that may properly be considered in a rule 3.850 motion, the trial judge reviewing the motion must either attach that portion of the case file or record which conclusively shows that the prisoner is entitled to no relief or grant an evidentiary hearing. Gunn v. State, No. 78-211/T4-51 (Fla. 5th DCA Jan. 2, 1980); Giles v. State, 363 So.2d 164 (Fla. 3d DCA 1978); Payne v. State, 362 So.2d 688 (Fla. 2d DCA 1978). Based on our review of the record presented to this Court, we cannot say that appellant's specific allegations of ineffective assistance of counsel, considered collectively, conclusively show a lack of merit so as to obviate the need for an evidentiary hearing into the matter.

With regard to ground 4, the Court is not persuaded that appellant is entitled to an evidentiary hearing respecting his contention that Florida's death penalty statute is imposed in an unconstitutionally discriminatory fashion.

Accordingly, to the extent that the trial court's orders and amended order deny relief under rule 3.850 with respect to the ground of ineffective assistance of counsel, they are hereby reversed. The orders are in all other respects affirmed. This

case is remanded to the trial court for a prompt evidentiary hearing on the question of ineffective assistance of counsel. The stay of execution previously granted by this Court on February 11, 1980, is dissolved.

It is so ordered.

ENGLAND, C.J., OVERTON, SUNDBERG, ALDERMAN and McDONALD, JJ., Concur
OVERTON, J., Concurs specially with an opinion, with which ALDERMAN and McDONALD, JJ., Concur
SUNDBERG, J., Concurs specially with an opinion, with which ENGLAND, C.J., Concurs
ADKINS, J., Dissents with an opinion, with which BOYD, J., Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

OVERTON, J., specially concurring.

I would totally reject the contention of the movant-appellant that a victim-oriented statistical factual basis may be submitted within the purview of Henry v. State, 377 So. 2d 692 (Fla. 1979), to show that Florida's death penalty statute is imposed in an unconstitutional and discriminatory manner.

The appellant's statistical allegations are based entirely on the race of the victim rather than the race of the offender. To try to statistically correlate offenders' race with the race of their victims results in a mathematical nightmare which has no bearing on the actual conduct of the offender as the determining factor of who lives and who dies. We are obligated to review each case upon its facts and circumstances and determine whether or not the conduct of the offender justifies the imposition of the death penalty.

The appellant's own statistical allegations clearly establish that this black appellant has not been prejudiced. The figures specifically reflect that of the 2,606 homicides committed by blacks, fifty-nine have resulted in the death penalty. On the other hand, of the 2,256 homicides committed by whites, seventy-two have resulted in the death penalty. These statistics reflect no disparity or discrimination. In my view, the statistical information submitted by appellant in this cause is similar to that rejected by the Fifth Circuit Court of Appeals in Spinkellink v. Wainwright, 578 F.2d 582 (5th Cir. 1978), cert. denied, 440 U.S. 976 (1979). There Spinkellink submitted statistical evidence which reflected that "92 percent of the inmates on Florida death row had murdered white victims while only 8 percent had murdered black victims." [Emphasis added.] 578 F.2d at 612. This data was held to be legally insufficient to establish a prima facie showing of racial discrimination. I conclude that the instant figures similarly fail to establish a factual basis for the proposition that our death penalty statute is being applied in a discriminatory manner or is not racially neutral. See Lewis, Mannle, Allen, and Vetter, A Post-Furman Profile of Florida's Condemned--A Question of Discrimination in Terms of the Race of the Victim and a Comment on Spinkellink v. Wainwright, 9 Stetson Law Review 1 (1979).

ALDERMAN and McDONALD, JJ., Concur

SUNDBERG, J., concurring specially.

While I concur in the Court's opinion and judgment in this case, I deem it appropriate to express the reason for my concurrence in the conclusion that appellant is not entitled to an evidentiary hearing regarding his contention that Florida's death penalty statute is imposed in an unconstitutionally discriminatory fashion. The reason is that I do not believe appellant has made a sufficient preliminary showing to require such a hearing. Counsel for appellant urges us to adopt the test enunciated in Castaneda v. Partida, 430 U.S. 482 (1977), as a guide in determining whether our statute has been unevenly applied. Pursuant to that test it would be appellant's task to show: (1) a marked statistical disparity over a significant period of time in the way the death penalty is imposed upon black and white capital defendants, and (2) that the capital sentencing procedure in Florida is susceptible of abuse or not racially neutral. If appellant introduced competent evidence in support of these two elements, he would have made a prima facie showing of discriminatory application of the death penalty, and the burden would then shift to the state to rebut appellant's case. Id. at 494-95. See Rose v. Mitchell, ___ U.S. ____, 99 S. Ct. 2993, ___ L.Ed.2d ____ (1979); Washington v. Davis, 426 U.S. 229 (1976). Assuming, without deciding, that the Castaneda test is an appropriate analytical tool in this case,* appellant has failed, even on a preliminary basis so as to justify an evidentiary hearing, to present a sufficiently compelling statistical showing over a significant period of time that Florida's death penalty statute has been unconstitutionally applied. I would note incidentally that appellant's statistical data is victim-oriented; there has been no showing of disproportionate black representation of those now residing on death row as a result of the operation of our capital sentencing statute, section 921.141, Florida Statutes (1979).

ENGLAND, C.J., Concurs

* Indeed, that the Castaneda analysis is appropriate in the context of an equal protection challenge to Florida's death penalty statute is not without some doubt. See Spinkellink v. Wainwright, 578 F.2d 582 (5th Cir. 1978).

ADKINS, J., Dissenting.

The motion, the files, and the records in the case conclusively show that defendant is not entitled to relief. The trial judge properly denied an evidentiary hearing.

After meticulously picking through the record, appellate counsel has differed with the judgment of trial counsel in the manner in which certain portions of the trial were conducted. Therefore appellate counsel says trial counsel should be placed upon trial before the trial judge. The trial judge has carefully considered contentions of appellate counsel and decided that trial counsel rendered reasonably effective counsel based on a totality of the circumstances. The record disclosed this on its face, so the trial judge denied the motion. Appellate counsel now complains to us, saying the trial judge committed error. We have examined this record twice in the past, and our decision was not disturbed by the United States Supreme Court. The majority has been led into a quagmire of confusion and decided that still another hearing should be held.

Using general terms and without setting forth specific guidelines, the majority is telling the trial judge to try trial counsel. Even a defendant in a criminal case requires a more definite specification of charges before he is required to answer.

The guilt of the defendant is firmly established by the evidence. The trial judge justified his sentence of death in writing and provided this Court the opportunity for a meaningful review. We determined that the trial judge viewed the issue of life or death within the framework of the rules provided by statute. The Supreme Court of the United States agreed with us.

As stated in State v. Dixon, 283 So.2d 1 (Fla. 1973), discrimination or capriciousness cannot stand where reason is required. This was an aggravated and indefensible crime. The alleged statistics gathered by appellate counsel do not change the nature of this crime nor do they have any bearing on whether this particular defendant should or should not receive capital punishment.

The citizens of our state, speaking through the legislature, have determined that capital punishment should be inflicted in

certain instances. The Supreme Court of the United States has held that our form of procedure is constitutional. This Court has followed the guidelines set forth by the legislature and approved by the United States Supreme Court. If we continue to create new procedures, and cause more delays, the deterrence of capital punishment will be ineffective.

To be successful in his contention, the defendant would be required to show that the procedure under which a person is selected for a death sentence is susceptible to abuse or not racially neutral. Unless there is a scheme or conspiracy among the twenty state attorneys in Florida to seek death penalties primarily when a white victim has been murdered, then race-of-the-victim argument must fail under its own weight. Also, the imposition of the death penalty ultimately requires the concurrence of the trial judge, the Florida Supreme Court, and the Governor's Executive Clemency Board. To be successful, the defendant must show that all of these officers participated in intentional or purposeful discrimination. As stated in "A Post-Furman Profile of Florida's Condemned, etc.," by Lewis, Mannle, Allen and Vetter, 9 Stetson Law Review 1 (Fall 1979), "it is thus unlikely that any defendant will be able to establish a prima facie case of purposeful discrimination based on a 'race-of-the-victim' hypothesis."

Our system guards against discrimination in terms of the race of the victim and is not subject to attack on that basis.

Our responsibility is a tremendous one in capital cases. However, this defendant has received a fair and impartial trial, counsel was reasonably effective based on the totality of the circumstances, and there is a total absence of discrimination in the imposition of the death penalty.

In my opinion the stay order should be dissolved and the decision of the trial judge should be affirmed.

BOYD, J., Concurs

An Appeal from the Circuit Court in and for Taylor County,

Royce Agner, Judge - Case Nos. 74-299-CF and 74-300-CF

Stephen D. Stitt and June Rice, Gainesville, Florida,

for Appellant

Jim Smith, Attorney General; and Wallace E. Allbritton, Assistant Attorney General, Tallahassee, Florida,

for Appellee

IN THE THIRD ... AL CIRCUIT COURT
TAYLOR COUNTY, FLORIDA

STATE OF FLORIDA :

v. : Case No. 74-299

DOUGLAS RAY MEEKS :

_____ :

MOTION FOR POST CONVICTION RELIEF

1. Name and location of the court which entered the judgment of conviction under attack: Third Judicial Circuit Court, Taylor County, Florida.

2. Date of judgment of conviction: March 12, 1975

3. Length of sentence: Count I, Death; Count II, Life; Count III, 15 years consecutive; Count IV, 15 years consecutive.

4. Nature of offense(s) involved (all counts): Count I, Murder in the First Degree; Count II, Robbery; Count III, Assault with the Intent to Commit Murder; Count IV, Use of a Firearm in the Commission of a Felony.

5. What was your plea? (check only one)

(a) Not Guilty X
(b) Guilty _____
(c) Nolo Contendere _____
(d) Not Guilty by reason of Insanity _____

If you entered one plea to one count, and a different plea to another count, give details:

N/A

6. Kind of trial: (check only one)

(a) Jury X
(b) Judge only without jury _____

7. Did you testify at the trial or at any pre-trial hearing?

Yes _____ No X

If yes, list each such occasion:

8. Did you appeal from the judgment of conviction?

Yes X No _____

9. If you did appeal, answer the following:

(a) Name of court: Florida Supreme Court
(b) Result: affirmed conviction
(c) Date of result: October 38, 1976
(d) Citation (if known): 339 So. 2d 186

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in this court?

Yes _____ No X

11. If your answer to number 10 was "yes", the following information (applies only to proceedings in this court): N/A

(a) (1) Nature of the proceeding:

(2) Grounds raised:

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes_____ No_____

(4) Result:

(5) Date of result:

(b) As to any second petition, application, motion, etc. give the same information:

(1) Nature of the proceeding:

(2) Grounds raised:

(3) Did you receive an evidentiary hearing on your petition, application, motion, etc?

Yes_____ No_____

(4) Result:

(5) Date of result:

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petition, applications, motions, etc. with respect to this judgment in any other court?

Yes X No_____

13. If your answer to number 12 was "yes", give the following information:

(a)(1) Name of court: United States Supreme Court

(2) Nature of the proceeding: Petition for Writ of Certiorari

(3) Grounds raised: (a) Whether Nondisclosure of Psychiatric report violates 6th and 14th Amendment rights; (b) Witherspoon challenges; and (c) Whether the death sentence violates 8th and 14th Amendment rights.

(4) Did you receive an evidentiary hearing on your petition, application, motions, etc?

Yes _____ No X

(5) Result: Petition denied

(6) Date of result: November 27, 1978

(b) As to any second petition, application, motion, etc. give the same information: N/A

(1) Name of Court:

(2) Nature of the proceeding:

(3) Grounds raised:

application, motion, etc.?

Yes_____ No_____

(5) Result:

(6) Date of result:

(c) As to any third petition, application, motion, etc., give the same information: N/A

(1) Name of Court:

(2) Nature of the proceeding:

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application, motion, etc.?

Yes_____ No_____

(5) Result:

(6) Date of result:

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them.

For your information, the following is a list of the most frequently raised grounds for post-conviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the Court if you merely check (a) through (l).

(a) Conviction obtained by plea of guilty or nolo contendere which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected or impanelled.

(i) Denial of effective assistance of counsel.

(j) Denial or right of appeal.

(k) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as an unconstitutional statute).

(l) Sentence in excess of the maximum authorized by law.

A. Ground one: is the position of the endant/Petitioner that court appointed counsel did not render effective assistance of counsel at trial, at the sentencing hearing, or on appeal.

Supporting Facts: Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

B. Ground two: Defendant's death sentence was imposed in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution because it was imposed upon the recommendation of a jury that was not required to be unanimous.

Supporting Facts: Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

C. Ground three: Defendant's death sentence was imposed pursuant to a recommendation of a jury selected through procedures that systematically excluded from jury service persons having scruples against the death penalty, in violation of Witherspoon v. Illinois.

Supporting Facts: Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

D. Ground four: Defendant's death sentence violates the Equal Protection clause of state and federal constitutions because it was imposed pursuant to a pattern and practice of racial discrimination in capital sentencing.

Supporting Facts: Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

E. Ground five: Defendant's sentence of life imprisonment on the conviction of robbery should be vacated because there was no evidence of premeditation in the charge of murder. Therefore, the Defendant could not be convicted of felony-murder and the underlying felony upon which the murder conviction was based.

Supporting Facts: Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

F. Ground six: The Defendant is entitled to a resentencing hearing on the conviction for first degree murder because statutory mandates were not followed and because the prosecutor was allowed to make improper argument to the jury. These procedures denied the Defendant due process of the law, in contravention of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Supporting Facts" Please see attached Supplement to Motion for Post Conviction Relief incorporated herein by reference.

15. If any of the grounds listed in 14A, B, C and D were not previously presented on your direct appeal, state briefly what gounds were not so presented, and give your reasons why they were not so presented:

Due to lack of effective representation at trial and on appeal, issues were not raised or preserved. There was no knowing waiver on the part of the Defendant of any of the preceding issues and failure to raise or argue issues was not grounded in strategy by counsel.

16. Do you have any petition, application, appeal, motion, etc. now pending in any court, either state or federal, as to the judgement under attack?

Yes ____ No X

17. If your answer to number 16 was "yes", give the following information: N/A

(a) Name of Court:
(b) Nature of the Proceedings:
(c) Grounds raised:
(d) Status of the proceedings:

18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

(a) At preliminary hearing: -

(b) At arraignment and plea:

(c) At trial: Mr. John Howard, Cross City, Florida

(d) At sentencing: Mr. John Howard, Cross City, Florida

(e) On appeal: Mr. John Howard, Cross City, Florida

(f) In any post-conviction proceeding: On Petition for Writ of Certiorari to the United States Supreme Court: David Kendall, Jack Greenberg, James Nabritt III, Joel Berger, N.A.A.C.P. Legal Defense Fund, New York, and Anthony G. Amsterdam, Stanford, California.

(g) On appeal from any adverse ruling in a post-conviction proceeding:

WHEREFORE, Movant prays that the Court grant all relief to which he may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

1. Vacation of judgment and sentence and new trial, and
2. Such other and further relief as the Court deems just and proper.

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned authority, this day personally appeared June Rice who first being duly sworn, says that she is counsel for the Defendant in the above-styled cause, that she has read the foregoing Motion for Post-Conviction Relief and has knowledge of the facts and matters therein set forth and alleged; and that each and all of these facts and matters are true and correct to the best of her knowledge.

June Rice
June Rice

SWORN AND SUBSCRIBED TO
before me this 11th
day of December, 1979.

Cynthia J. Jackson
NOTARY PUBLIC
COMMISSION EXPIRES
3/7/82

A. Ground One Supporting Facts:

1. Ineffective Assistance at Trial.

a. Although defense counsel originally filed a plea of Not Guilty by Reason of Insanity, counsel later withdrew that plea and did nothing further to explore theories of diminished responsibility or prior mental health problems.

Counsel was present during a psychiatric examination of the Defendant but it does not appear from the report or anywhere on the record that the Defendant was advised that statements made to the psychiatrist would be used against him. The majority of the report amounts to nothing more than a confession with very little comment on the issues of competency or insanity. The record does not reflect any advice on counsel's part as to the Defendant's Fifth Amendment rights against self-incrimination.

b. There was no motion for change of venue or in the alternative any effective voir dire questioning by counsel concerning publicity and/or knowledge of the case. Almost all of the prospective jurors admitted they had some knowledge of the case, either from reading about it in the newspaper, hearing about it on the radio, or hearing gossip or "street talk" about it. Several jurors were acquainted with various critical parties in the case, including the victim, the co-defendant, the defendant and several witnesses.

It appears from the record that two separate murder trials for the Defendant were scheduled back-to-back. There were no voir dire questions that explored knowledge of the fact that there was another murder charge or whether jurors had information concerning the other charge. Only pro forma questions were asked and there was no attempt to probe into prejudicial areas in camera. Because of the size of the town and the notoriety of the cases, counsel's failure to effectively voir dire prospective jurors denied the Defendant a fair and impartial jury. Counsel failed to establish a record reflecting the

prejudice that is highly likely to exist in such a situation. No effort was made to determine the content of the "gossip" and "street talk" the prospective jurors were exposed to.

c. Counsel failed to establish a record concerning possible jury selection violations, both in the grand and petit juries. Counsel did not question prospective jurors about possible race prejudice, even though the Defendant was Black and the victims white. The record does not reflect whether there were members of the Defendant's race in the grand jury pool, the petit jury pool, or on the jury itself.

d. Counsel failed to build a record concerning possible Witherspoon challenges. The trial transcript contains numerous notations of "inaudible" and it is impossible to tell from the transcript which juror answered questions in what manner and which jurors were excused as a result. Defense counsel made no effort to make sure that the prospective jurors understood their legal duty to subordinate their scruples and apply the law as instructed by the judge. Counsel's failure to rehabilitate prospective jurors or to make sure they understood the issue served to deny the Defendant any possibility of representation on the jury of persons with scruples against the death penalty. Please see Ground Three for additional supporting facts.

2. Ineffective Assistance at the Sentencing Phase.

It is clear from the record that there was literally no preparation by counsel for the sentencing phase of the trial. The jury returned a verdict of guilty to all counts of the indictment at 4:52 p.m. Defense counsel did not request a continuance to prepare for argument or the presentation of mitigating circumstances. The sentencing phase began at 5:05 p.m.and the only witness called was the Taylor County clerk of the court. Defense counsel, by asking the clerk about pending cases in other counties, opened the door for the prosecutor to ask on cross examination about other pending charges in Taylor County. The jury was therefore allowed to hear information that was highly prejudicial to the Defendant and which was a non-statutory aggravating circumstance.

the jury in this life or death recommendation was a few seconds of argument which did not touch on any of the statutory mitigating circumstances. Nor did defense counsel rebut any of the inaccurate or inappropriate argument made by the state attorney. Please see Ground Six for additional supporting facts.

3. Ineffective Assistance on Appeal. The court-appointed trial counsel was designated by the trial judge to represent the Defendant on appeal. Although counsel raised seven points on appeal, the brief filed by counsel contained less than six pages of argument. One of the points raised on appeal was specifically waived by counsel at trial, that of polling the jury regarding their sentencing recommendation. Because of counsel's failure to raise and preserve possible points of appeal at the trial stage, counsel prevented the Defendant from having a full review of his death sentence as mandated by the Florida Supreme Court and the United States Supreme Court.

B. Ground Two Supporting Facts:

Florida Statutes 921.141(3) provides that the jury recommendation of sentence shall be by majority vote.

C. Ground Three Supporting Facts:

Witherspoon forbids the allowance of a challenge for cause to a venireman unless that venireman has first been instructed by the trial judge that he has a legal duty to subordinate his scruples to his obligation to sit as a juror and to follow the law if he possibly can. Unless the venireman, after such instruction, makes it unmistakably clear that he is unable to consider the application of the death penalty in any case, he cannot be excused for cause.

Two jurors were excused for cause without such instruction by the judge; Mrs. Tumlin (p. 56 of the trial transcript) and Mrs. Hale (p. 82 of the trial transcript). Defense counsel did not object to the challenges for cause and also failed to determine whether the juror understood the issue and would

follow the law as instructed. In the case of Mrs. Tumlin, she at one point stated she would be able to reach a verdict in spite of her opposition to the death penalty. In the case of Mrs. Hale, it is impossible to tell whether the challenge for cause was appropriate because the record only reflects that her responses to questions concerning her ability to reach a verdict were inaudible.

D. Ground Four Supporting Facts:

The death penalty has been imposed against the Defendant in violation of his constitutional rights under the Eighth, and Fourteenth Amendments in that the penalty improperly discriminates against black people and in favor of white people. On information and belief, the Defendant avers, and requests a hearing at which he may prove, that fifty percent of Florida's murder victims are white, yet their killers comprise 95 percent of the state's death row. The death penalty in Florida is far more likely to be imposed in "black on white" homicide cases than in those similar circumstances but involving a different racial mixture.

E. Ground Five Supporting Facts:

The state attorney made it clear to prospective jurors on voir dire and to the jury in opening statement and closing argument that he did not have to prove premeditation in order for the jury to convict the Defendant of first degree murder. No evidence was presented at trial or during the penalty phase that the murder was committed with premeditation. The court in Pinder v. State, 336 So. 2d 38 (3DCA 1978), held that where a jury could have found the Defendant guilty of first-degree murder only on the basis of evidence that he killed the victim during the perpretration of an itemized felony, and without evidence of premeditation, there could not be a sentence for the underlying felony as well as for the first degree murder.

F. Ground Six Supporting Facts:

At the sentencing phase of the trial, the jury was permitted to hear evidence that the Defendant had another pending charge in Taylor County. This is an impermissable non-statutory

aggravating circumstance. The jury also heard argument from the prosecutor that was inaccurate and inappropriate. Specifically, the state attorney argued that the fact that the Defendant did not have a prior or significant history of prior criminal activities should not be any kind of mitigating circumstance (p. 423 of the trial transcript), directly contrary to the statute. The prosecutor argued that the Defendant was in his mid-twenties when in fact he was only 21. This coupled with the Defendant's low I.Q. was ultimately determined to be a mitigating factor by the trial judge, but it is impossible to tell whether the jury considered any mitigating factors due to the prosecutor's erroneous arguments and defense counsel's failure to argue mitigation. The prosecutor also argued that the fact that the Defendant was convicted on four counts should be considered in aggravation, another impermissable non-statutory aggravating circumstance.

The prosecutor doubled up on factors involving pecuniary gain (both the underlying felony of robbery and for pecuniary gain) determined to be impermissable under subsequent case law. The prosecutor failed to inform the jury that a capital life sentence involves 25 years mandatory without parole and instead misled the jury by saying that if they recommended life, the Defendant would receive no greater sentence than he could receive for the robbery. The argument that "to recommend life imprisonment is to turn him loose with murder" was inaccurate and inflammatory. Because the prosecutor argued impermissable non-statutory aggravating circumstances and seriously misled the jury in several other regards, the Defendant should receive a new sentencing hearing.

It is impossible to conclude that the advisory jury gave full and fair consideration to their decision in light of the unlawful and inaccurate argument by the prosecutor, the failure of defense counsel to rebut or offer mitigation, the brevity with which the issues were considered after a long and difficult day. The sentencing phase was conducted immediately after two full days of trial, beginning at 5:05 p.m. The jury retired to

deliberate at 5:40 , returning a death recommendation at 6:03. That same day the trial judge sentenced the Defendant to death. It is inconceivable that this sentence could have resulted from the careful deliberation warranted by such a grave decision without any presentation of mitigation on the part of defense counsel, without the benefit of a pre-sentence investigation report, and upon the recommendation of a tired jury exposed to non-statutory aggravating circumstances and improper argument by the prosecutor. A sentence of death is far too serious to be arrived at so summarily.

IN THE THIRD JUDICIAL CIRCUIT
COURT, TAYLOR COUNTY, FLORIDA

STATE OF FLORIDA,

vs. Case No. 74-299-CF

DOUGLAS RAY MEEKS.

SUPPLEMENT TO MOTION FOR POST CONVICTION RELIEF

G. GROUND SIX: The Petitioner is entitled to be resentenced without the consideration of a psychiatric report which was provided to the Court after a court-ordered psychiatric examination held to determine Petitioner's sanity at the time of the crime and competency to stand trial. The use of the psychiatric report violated Petitioner's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
Supporting Facts: The psychiatric report provided by Dr. Carrera was used as a sentencing tool by the judge in both cases against the Petitioner. In 74-299, the judge quoted extensively from the report in his written findings supporting the death sentence. There is no question but that the report worked to disadvantage Petitioner and that he had abandoned any claim to the defense of insanity before the consideration of the report in sentencing. Petitioner submits that the exploration of insanity as a defense by an indigent person does not open the door for the judge to rely on specific information prejudicail to Petitioner when such information was gained from confidential reports of court-ordered psychiatrists.

H. GROUND SEVEN: Petitioner's death sentence is unconstitutional as applied under the Eighth and Fourteenth Amendments to the United States Constitution because it is part of a wanton and freakish pattern of imposition in the State of Florida.
Supporting Facts: Although the facial constitutionality of Florida's 1972 death penalty statute has been upheld, the death penalty has since been administered and applied under the statute in a manner

which is inconsistent with the premises of State v. Dixon, 283 So. 2d 1 (Fla. 1973) and Profitt v. Florida, 428 U.S. 242 (1976). Death sentences are imposed irregularly, unpredictably and whimsically in cases which are no more deserving of capital punishment, under a standard that considers the character of the offender and the offense, than many other cases in which sentences of imprisonment are imposed.

I. GROUND EIGHT: Prejudicial error was committed by the trial court, when during jury deliberation, a question was presented by the jury which was answered with information not in evidence and which made inferences concerning the Petitioner's failure to testify in his own behalf, thereby constituting an improper comment on Petitioner's right to remain silent as provided by the Fifth Amendment to the United States Constitution.

Supporting Facts: The jury asked the following question:

> "JUROR: Yes, Your Honor, the question has come over and over in our discussion, why Mr. Hardwick was not a witness in any way relating to the case."
>
> (T-299, p. 391)

The Court answered in the following way:

> "COURT: Court is in order. Members of the Jury, Homer Lee Hardwick, Jr., is under an Indictment charging him with crimes arising out of the same transaction as that which this trial is concerned and therefore he cannot be compelled to testify."
>
> (T-299,p. 395)

This answer was outside the evidence presented in the case and inferred not only that if Mr. Hardwick were required to testify that he might incriminate himself, it also implied that Mr. Hardwick's testimony would incriminate the Petitioner. It is also an implication that failing to testify results from an unwillingness to incriminate oneself.

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplement to Motion for Post Conviction Relief, in Case No. 74-299, has been furnished to the Office of the State Attorney, Third Judicial Circuit Court, P. O. Drawer 1546, Lake City, Florida, 32055, by first-class mail, this 16th day of January, 1980.

June Rice

Judy Rice

Stephen D. Stitt

ATTORNEYS FOR PETITIONER

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR TAYLOR COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs. Case No. 74-299-CF

DOUGLAS RAY MEEKS,

Defendant.

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

COMES NOW the Defendant, Douglas Ray Meeks, by and through undersigned counsel and respectfully files his Statement of Judicial Acts to be Reviewed, pursuant to Rule 9.140(d), Florida Appellate Rules, and intended to be relied upon in the Florida Supreme Court, and states the following:

1. The Trial Court erred in failing to admit as evidence proffered testimony regarding the racial atmosphere existing in Perry, Florida, at and around the time of the trial, which was relevant to the issue of trial counsel's ineffective representation.

2. The Trial Court erred in failing to admit as evidence the testimony of a witness proffered to show mitigating circumstances which should have been presented at the penalty phase of the trial.

3. The Trial Court erred in denying Defendant's Motion for Costs for Experts who would have offered testimony in mitigation at the sentencing phase, and for experts who would testify regarding the prevalence of racial bias in the community from which the jury was drawn.

4. The Trial Court erred in denying Defendant's Motion for Transciption of the voir dire examination in the co-defendant's case as evidence relating to community attitudes and racial atmosphere relevant to trial counsel's ineffectiveness.

5. The Trial Court erred in denying Defendant's Motion for Prior Authorization of Costs reasonably necessary to the preparation of Defendant's case.

6. The Trial Court erred in denying Defendant's motion for a copy of the transcripts in the co-defendant's case as evidence relating to trial counsel's ineffectiveness.

7. The Trial Court erred in holding that under the totality of circumstances, the Defendant received reasonably effective assistance of counsel at trial, at sentencing, and on appeal.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the Office of the State Attorney, Third Judicial Circuit, Taylor County, Florida, this 20th day of November, 1980, by first class mail.

Respectfully Submitted,

Stephen D. Stitt

Stephen D. Stitt
Holland Law Center
University of Florida
Gainesville, Florida 32611

June Rice

June Rice
3915 S. W. 18th Street
Gainesville, Florida 32608

ATTORNEYS FOR DEFENDANT

APPENDIX D

Fla. Stat. §921.141 **SENTENCE OF DEATH OR LIFE IMPRISONMENT FOR CAPITAL FELONIES; FURTHER PROCEEDINGS TO DETERMINE SENTENCE**

(1) Separate proceedings on issue of penalty. -- Upon conviction or adjudication of guilt of a defendant in a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) Advisory sentence by the jury. -- After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) Findings in support of sentence of death. -- Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) Review of judgment and sentence. -- The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within sixty (60) days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed thirty (30) days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) Aggravating circumstances. -- Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(6) Mitigating circumstances. -- Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

APPENDIX B

IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT, IN AND FOR TAYLOR COUNTY, FLORIDA.

CRIMINAL CASE NO: 74-299-CF

STATE OF FLORIDA, :
VS. :
DOUGLAS RAY MEEKS, :
Defendant. :

FILED IN OFFICE THIS
JUN 4 1975
CHARLES RALPH CARLTON
CLERK CIRCUIT COURT
TAYLOR COUNTY, FLORIDA
BY Charles Carlton
CLERK

WRITTEN FINDINGS UPON WHICH SENTENCE OF DEATH IS BASED

On March 12, 1975, in the Taylor County Courtroom at Perry, Florida, the defendant was found guilty of murder in the first degree of the death of Lloyd Walker, of the age of sixteen (16) years under Count I of a IV-Count indictment. Under Count II, the defendant was found guilty of robbery of Diane Allen. Under Count III, the defendant was found guilty of assault upon Diane Allen with intent to commit murder in the first degree. Under Count IV, he was found guilty of the use of a firearm during the commission of robbery.

The undersigned judge heard all the evidence in this case and observed all the witnesses as they testified.

Following reception of the jury's verdict finding guilt of murder in the first degree, a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment was held. In this proceeding, the State rested upon the evidence previously introduced during the trial as to guilt. The defendant called the clerk in custody of the Taylor County Sheriff's records as his sole witness. In response to defense counsel's questions, she testified that

there were no charges pending against the defendant in any other county. Over defense counsel's objections, she testified that there was an additional charge of murder pending against the defendant in this county.

By agreement, counsel for the State and the defendant, in the order named, then made arguments to the jury for and against the death sentence.

The Court then instructed the jury as to the provisions of Fla.Stat. 921.141 and the jury retired for deliberations. It rendered an advisory sentence of death.

The death sentenced was imposed.

This Court finds that the facts of this case do not support the aggravating circumstances in Fla. Stat. 921.141(6), subsections (a),(b) and (c) in that this captial felony was not committed by a person under sentence of imprisonment nor had the defendant previously been convicted of a capital felony nor did the defendant knowingly create a great risk of death to many person.

The Court does find, as an aggravating circumstance, that the capital felony, the murder of Lloyd Walker, was committed as a part of another dangerous and violent felony, the robbery of Diane Allen at gunpoint and in flight after committing that felony, Fla.Stat. 921.141(6)(d).

The Court also finds, as an aggravating circumstance, that the capital felony was committed with the motive of avoiding and preventing arrest, was committed for pecuniary gain and to hinder the enforcement of laws. Fla. Stat. 921.141 (6)(e)(f)(g).

The uncontroverted testimony of Diane Allen at the trial was that she was on duty as a clerk in a Junior Food Store in Perry, Florida, at approximately 8:00 o'clock p.m. on November 6, 1974, a Wednesday. She was behind the counter to the left of the cash register. Lloyd Walker, sixteen (16), was

the only other person in the store. He was standing slightly to her right and in front of the counter. Two men entered the store. The taller of the two, the accomplice not on trial, grabbed Lloyd Walker around his neck from behind with such force as to almost lift him from the floor and the second, the defendant, held a small revolver on Diane Allen and told her to give him the money which she did. It amounted to about $35.00. The defendant then told Diane Allen and Lloyd Walker to go to the back. They did go to a small room in the rear of the store where soft drink bottles were kept. They were ordered to lie down on the floor. They did lie down on their backs. Defendant Meeks still had the revolver in his hand. They were told to turn over on their stomachs. They did. Thereafter Diane Allen heard shots. About the third or fourth shot, she felt a pain or indication that she had been struck in her left upper back region. She heard another shot or so, then heard the bell on the door to the store ring.

She then got up and came to the front area of the store. The defendant Meeks and his accomplice were nowhere to be seen. She returned to the rear area of the store where Lloyd Walker was lying and called to him.

He did not respond to her calls. He died in Tallahassee Memorial Hospital on November 12, 1974, due to transection of his spinal cord from the brainstem by bullet wound, according to the autopsy report of Doctor Thomas P. Wood, who testified at the trial. (Copy of report attached). He found the bullet to have entered the right side of the base of the neck posteriorly, to course slightly superiorly and to the left.

Turning to mitigating circumstances, the Court finds that the defendant has no prior signifcant history of criminal activity. Fla.Stat.921.141(7)(a) and therefore this fact has been considered as a mitigating circumstance.

Under Fla.Stat.921.141(7) subsections (b) and (f), the Court finds that the defendant was suffering from no extreme

mental or emotional disturbance and that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was not substantially impaired.

The defendant moved for appointment of psychiatrists to examine him "...to substantiate the insanity of the Defendant at the time of the crime and subsequently thereto...". (Prior to trial defendant's counsel moved to withdraw the motion alleging insanity). Doctors Barnard and Carrera were appointed and reported the results of their examination. Their report is devoid of any evidence of mental or emotional disturbance of the defendant. Doctor Carrera's report shows that the defendant stated that "... I just did it... after it was all over I just felt like myself... I wasn't scared or upset... no change in myself... I wasn't angry with any one that day". According to the report, the defendant had whiled away the hours of the day of the offense, attending a portion of a football game immediately prior to the offense. The psychiatrists both conclude that the defendant was sane at the time of the examination and at the time of the offense.

Doctor Carrera's report has been received and read by the undersigned but has not been filed. Insofar as the Court is now aware, it has never been seen by counsel for the State or the defendant. The report recites, however, that defense counsel was present during the psychiatric examination of the defendant which forms the basis of the report. Doctor Carrera's report includes a history taken from the defendant. In this history, the defendant told Doctor Carrera that he and his accomplice discussed robbing the store. The accomplice told the defendant that the girl in the store knew the accomplice. The accomplice also said that, if they robbed the store, he didn't want anyone talking on him, so it would be necessary for them to shoot her. According to the report, the defendant's

response was that it was all right with him and that it seemed like a good idea to shoot the store employee so that in that way nobody would recgonize them and blame them for it.

This fact has been considered under Fla.Stat.921.141 (7)(e). The Court rejects it as a mitigating circumstance and finds that Meeks was not under the duress or domination of his accomplice at the time he committed the capital felony.

On the contrary, this fact supports the finding that the capital felony was committed under the aggravating circumstances hereinabove outlined with respect to avoiding arrest and to hinder the enforcement of law.

Further, the Court finds that the victim certainly was not a participant in nor consented to the criminal conduct, Fla.Stat.921.141 (c)(e) and that the defendant, even if found to be an accomplice, did play a major part in the capital felony. Fla.Stat.921.141(7)(d). No mitigation exists under either of these subsections.

Finally, the age of the defendant has been considered as required by Fla.Stat.921.141(7)(g). The defendant is 21. The report of Doctor Barnard contained his medical judgment that the defendant was of dull-normal intelligence.

The Court finds the combination of the defendant's youthful age and his intelligence to be a mitigating factor.

The Court, in the circumstances of this case, deemed the requirement of CrPR 3.710 to be directory and not mandatory. Therefore, no pre-sentence report has been considered.

The Court and counsel throughout the conduct of this trial, and especially after determination of guilt, considered the pronouncement of the Supreme Court of Florida in Dixon v. State, 283 So2d 1.

Mindful of the language on page eight (8) of that opinion by Chief Justice Adkins, this trial judge attempted to

give thoughtful consideration to the evidence in this case as to the aggravating or mitigating circumstances. In particular, an absolute presumption of innocence has been accorded the defendant as to a pending indictment in this Court for a subsequent alleged murder in a transaction completely unrelated to this instant capital felony.

Upon consideration, it was at the time of sentencing and is now, some hours later as the sentence of death is justified in writing, the inescapable conclusion of the undersigned that sufficient aggravating circumstances exist in the facts to justify the death penalty. The murder of the victim by the defendant was for the express purpose of executing the victim to prevent his identifying the defendant, so that the defendant could flee after having committed robbery at gunpoint for pecuniary gain which robbery was witnessed by the victim and to prevent the lawful arrest of the defendant and thus this conscienceless murder was designed to hinder the enforcement of laws.

The mitigating circumstances of a young age and no prior history of criminal conduct on the part of the defendant are entirely insufficient to and do not outweigh the aggravating circumstances.

SIGNED this March 17, 1975.

Royce Agner

ROYCE AGNER, CIRCUIT JUDGE